

# MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

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At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11<sup>th</sup> day of April, two thousand and eighteen.

Before: Barrington D. Parker,  
Gerard E. Lynch,  
Susan L. Carney,  
*Circuit Judges.*

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Novelis Corporation,

Petitioner - Cross - Respondent,

John Tesoriero, Michael Malone, Richard Farrands,  
Andrew Duschen,

Docket Nos. 16-3076 (L),  
16-3570 (XAP)

Intervenors,

v.

National Labor Relations Board,

Respondent - Cross - Petitioner,

United Steel, Paper and Forestry, Rubber,  
Manufacturing, Energy, Allied Industrial & Service  
Workers International Union, AFL-CIO, CLC,

Intervenor.

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JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

THIS CAUSE came to be heard upon a petition filed by Novelis Corporation for review of an Order of the National Labor Relations Board issued August 26, 2016, in Board Case Nos. 03-CA-121293, 03-CA-121579, 03-CA-122766, 03-CA-123346, 03-CA-123526, 03-CA-127024, 03-CA-126738, and 03-RC-120447, reported at 364 NLRB No. 101 (2016), and upon a cross-petition filed by the National Labor Relations Board for enforcement of said Order. The Court heard argument of the parties and has considered the briefs and transcript of record filed in this cause. On March 15, 2018, the Court, being

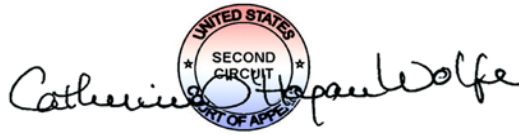
**MANDATE ISSUED ON 06/04/2018**

fully advised in the premises, handed down its opinion granting in part the petition of Novelis Corporation, granting the Board's cross-petition for enforcement in part and remanding in part to the Board for further consideration. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Second Circuit that Novelis Corporation, its officers, agents, successors, and assigns, shall abide by said order as modified by the Court. (See attached Order and Appendix).

For the Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". Overlaid on the signature is the official seal of the United States Court of Appeals for the Second Circuit. The seal is circular with a red outer ring containing the text "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in blue, flanked by two small stars.

NATIONAL LABOR RELATIONS BOARD

v.

NOVELIS CORPORATION

ORDER

Novelis Corporation, Oswego, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Threatening employees with job loss if they select the Union as their bargaining representative.
- (b) Threatening employees with a reduction in wages if they select the Union as their bargaining representative.
- (c) Threatening employees with more onerous working conditions if they select the Union as their bargaining representative.
- (d) Threatening employees that the Respondent would lose business if they select the Union as their bargaining representative.
- (e) Threatening employees by telling them that they did not have to work for the Respondent if they are unhappy with their terms and conditions of employment.
- (f) Threatening employees with layoffs if they select the Union as their bargaining representative.
- (g) Misrepresenting that the Union is seeking to have the Respondent rescind employees' pay and/or benefits and blaming the Union by telling employees that they would have to pay back wages retroactively as a result of charges filed by the Union.
- (h) Interrogating employees about their union membership, activities, and sympathies.
- (i) Prohibiting employees from wearing union insignia on their uniforms while permitting employees to wear antiunion and other insignia.
- (j) Selectively and disparately enforcing Respondent's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and antiunion postings and distributions.
- (k) Removing union literature from break rooms.

- (l) Granting wage increases or other benefits in order to discourage employees from selecting union representation.
  - (m) Soliciting grievances and promising to remedy them in order to discourage employees from selecting union representation.
  - (n) Demoting or otherwise discriminating against employees for supporting the Union or any other labor organization or for engaging in protected concerted activities.
  - (o) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the purposes of the Act.
- (a) On request by the Union, rescind the changes to Sunday premium pay and unscheduled overtime for its unit employees that were implemented on January 9, 2014.
  - (b) Within 14 days from the date of the Court's issuance of the mandate, offer Everett Abare full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
  - (c) Make Everett Abare whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this decision.
  - (d) Compensate Everett Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.
  - (e) Within 14 days from the date of the Court's issuance of the mandate, remove from its files any reference to the unlawful demotion of Everett Abare, and within 3 days thereafter notify him in writing that this has been done and that the demotion will not be used against him in any way.
  - (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (g) Within 14 days after service by the Region, post at its facility in Oswego, New York, copies of the attached Notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 2014.
- (h) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**  
Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** threaten you with job loss if you select the Union as your bargaining representative.

**WE WILL NOT** threaten you with a reduction in wages if you select the Union as your bargaining representative.

**WE WILL NOT** threaten you with more onerous working conditions if you select the Union as your bargaining representative.

**WE WILL NOT** threaten you with the loss of business if you select the Union as your bargaining representative.

**WE WILL NOT** threaten you by telling you that you can quit if you are unhappy with your terms and conditions of employment.

**WE WILL NOT** threaten you with layoffs if you select the Union as your bargaining representative.

**WE WILL NOT** misrepresent that the Union is seeking to have your pay and/or benefits rescinded and blame the Union by telling you that you will have to pay back wages retroactively as a result of charges filed by the Union.

**WE WILL NOT** interrogate you about your union membership, activities and sympathies.

**WE WILL NOT** prohibit you from wearing union insignia on your uniforms while permitting you to wear antiunion and other insignia.

**WE WILL NOT** selectively and disparately enforce our posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and anti-union postings and distributions.

**WE WILL NOT** remove union literature from mixed use areas.

**WE WILL NOT** grant wage increases or other benefits in order to discourage you from selecting union representation.

**WE WILL NOT** solicit grievances from you and promise to remedy them in order to discourage you from selecting union representation.

**WE WILL NOT** discharge or otherwise discriminate against any of you for supporting the Union or any other labor organization or for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL on request, by the Union, rescind the changes to Sunday premium pay and unscheduled overtime for our unit employees that were implemented on January 9, 2014.

WE WILL rescind our unlawful solicitation/distribution rules.

WE WILL, within 14 days from the date of the Court's issuance of the mandate, offer Everett Abare full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL, make Everett Abare whole for any loss of earnings and other benefits suffered as a result of his unlawful demotion, plus interest.

WE WILL compensate Everett Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL, within 14 days from the date of the Court's issuance of the mandate, remove from our files any reference to the unlawful demotion of Everett Abare, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the demotion will not be used against him in any way.

NOVELIS CORP.

The Board's decision can be found at [www.nlrb.gov/case/03-CA-121293](http://www.nlrb.gov/case/03-CA-121293) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

*Catherine O'Hagan Wolfe*

